

Letter of Findings: 02-20210055
Corporate Income Tax
For the Years Ending 2016

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Foreign corporation provided sufficient evidence to show that the Department mistakenly changed its Indiana apportionment percentage.

ISSUE

I. Adjusted Gross Income Tax - Apportionment.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Sherwin-Williams Co. v. Indiana Dep't. of State Revenue*, 673 N.E.2d 849 (Ind. Tax Ct. 1996); [45 IAC 3.1-1-38](#).

Taxpayer protests the imposition of additional adjusted gross income.

STATEMENT OF FACTS

Taxpayer is a foreign company doing business worldwide and in Indiana. The Department determined that Taxpayer had filed its return with an incorrect apportionment percentage, changed that percentage to what it believed was correct, and issued a Notice of Proposed Assessment for the tax period ending December 31, 2016. Taxpayer protested the assessment, and a hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

I. Adjusted Gross Income Tax - Apportionment.

DISCUSSION

Taxpayer argues that the Department's tax system erroneously changed Taxpayer's apportionment percentage. Taxpayer claimed zero apportionment on its 2016 return however, the system auto-corrected it to 100 percent apportionment. The Department confirmed that its system erroneously adjusted that to 100 percent.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

"Indiana imposes a tax on every corporation's adjusted gross income derived from sources within Indiana. [IC § 6-3-2-1(b).] In cases where a corporation derives business income from sources both within and without Indiana, the 'adjusted gross income derived from sources within the state of Indiana' is determined by an apportionment formula." *Sherwin-Williams Co. v. Indiana Dep't. of State Revenue*, 673 N.E.2d 849, 851 (Ind. Tax Ct. 1996). That formula operates by multiplying taxpayer's total business income by a fraction composed of a property factor, a payroll factor, and a sales factor. IC § 6-3-2-2(b).

[45 IAC 3.1-1-38](#) provides:

For apportionment purposes, a taxpayer is "doing business" in a state if it operates a business enterprise or activity in such state including, but not limited to:

- (1) Maintenance of an office or other place of business in the state
- (2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods
- (3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution
- (4) Rendering services to customers in the state
- (5) Ownership, rental or operation of a business or of property (real or personal) in the state
- (6) Acceptance of orders in the state
- (7) Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under P.L.86-272 to tax its net income.

As stated in Regulation 6-3-2-2(b)(010) [[45 IAC 3.1-1-37](#)], corporations doing business in Indiana as well as other states are subject to the allocation and apportionment provisions of [IC 6-3-2-2\(b\)-\(n\)](#).

After review of the Department's records and tax system, the Department agrees that there was a system error, and Taxpayer's apportionment will be corrected to reflect what it originally reported. The Department also notes that Taxpayer did not complete their Schedule E in a manner compatible with the Department's system. Taxpayer has met its burden under IC § 6-8.1-5-1(c). However, the Department's original assessment was not solely based on the apportionment adjustment, therefore the correction to zero apportionment will not fully resolve the adjustments and will not completely eliminate the assessment. The Department will issue a new assessment to reflect these changes.

FINDING

Taxpayer's protest is sustained.

July 30, 2021

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An [html](#) version of this document.